

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 215 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DILIP GAURISHANKER SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Mr. Samir Dave, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Satish R. Patel for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 20th December, 1998 passed by the respondent no.1-Commissioner of Police, Ahmedabad City, against the petitioner in exercise of powers conferred under Section 3(1) of the Prevention of

Antisocial Activities Act, 1985("PASA" for short) is challenged by the petitioner in this petition under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" produced by the petitioner vide Annexure "C" at running page 15 of the compilation indicate that criminal case bearing CR no.5076/98 was registered against the petitioner at Rakhial Police Station on 19th December, 1998 in respect to offences made punishable under the Bombay Prohibition Act, 1949 and 2280 litres of country made liquor was seized. The said case is pending investigation. It is also indicated in the grounds of detention that two witnesses on assurance of anonymity have supplied information of antisocial activity of the petitioner and on the basis of said material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a " bootlegger" within the meaning of Section 2(b) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his nefarious activity which is and is likely to affect the maintenance of public order, the impugned order is passed.

3. The petitioner has challenged the impugned order on numerous grounds. It has been contended that vide representation dated 28th July, 1999, the Advocate for the petitioner requested the Secretary, Home Department, State of Gujarat to provide documents like report of chemical analyzer in respect to material seized in a criminal case registered against the petitioner and also copies of the statement of witnesses recorded therein. That the petitioner has amended the petition and added grounds 18(A), 18(B) and 18(C) and has raised a specific plea in respect to non responding and non supply of documents demanded by the said representation.

4. Though rule is served, no affidavit appears to have been filed either on behalf of the detaining authority or the State Government.

5. Learned A.G.P Mr. Samir Dave on instruction and verification of original file stated at the Bar that the representation has been received and replied to. That the detaining authority was directed to supply copies of the statements demanded by the petitioner. However, no information is noted in the file whether the said instruction has been complied with by the detaining authority or not.

6. In the absence of any material placed on record it has to be concluded that the relevant and vital documents claimed by the petitioner through representation dated 28th July, 1999 has not been supplied to the petitioner by the detaining authority whereby the breach of constitutional mandate under Article 22(5) has been committed which has rendered the impugned order invalid, and as such, the petition deserves to be allowed.

7. As a result of the foregoing discussion, the petition is allowed. The impugned order dated 20th December, 1998 passed by the respondent no.1-Commissioner of Police, Ahmedabad City, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Dilip Gaurishankar Sharma is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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